

income to pay the TVCC's expected expenses.

The TVCC met on May 16, 1995, and unanimously recommended expenses of \$1,035,000 and an assessment rate of \$0.10 per 7/10 bushel carton. In comparison, budgeted expenses for the 1994-95 fiscal year were \$1,161,244, which is \$126,244 more than the \$1,035,000 recommended for the 1995-96 fiscal year. The assessment rate of \$0.10 is \$0.06 less than last season's assessment rate of \$0.16.

Major expense categories for the 1995-96 fiscal year include \$500,000 for advertising, \$180,000 for road guard station operation, and \$174,000 for the Mexican Fruit Fly support program.

Assessment income for the 1995-96 fiscal year is estimated at \$832,500 based upon anticipated fresh domestic shipments of 8,325,000 cartons of oranges and grapefruit. This, in addition to a withdrawal of \$193,500 from the TVCC's reserve fund, and \$9,000 estimated interest income should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1994-95 fiscal year was estimated at \$960,000 based upon anticipated fresh domestic shipments of 6 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the 1995-96 fiscal year are estimated at \$143,890. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous

basis; (2) the 1995-96 fiscal year for the TVCC begins August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; (3) handlers are aware of this action which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

**Note:** This section will not appear in the annual Code of Federal Regulations.

2. A new § 906.235 is added to read as follows:

#### § 906.235 Expenses and assessment rate.

Expenses of \$1,035,000 by the Texas Valley Citrus Committee are authorized and an assessment rate of \$0.10 per 7/10 bushel carton on assessable oranges and grapefruit is established for the 1995-96 fiscal year ending on July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
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#### 7 CFR Part 920

[Docket No. FV95-920-1FR]

#### Kiwifruit Grown in California; Relaxation of Pack Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule relaxes the pack requirements for kiwifruit packed in Size 45 containers under the Federal marketing order (order) for kiwifruit grown in California. This relaxation increases the size variation tolerance for all Size 45 containers of kiwifruit from 5 percent, by count, to 10 percent, by

count. This rule reduces grower and handler costs and enables more fruit to be packed and sold. Several editorial changes have been made to clarify the current kiwifruit handling requirements.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487-5901; or Charles Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 690-3670.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the order and approximately 600 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. A majority of handlers and producers of California kiwifruit may be classified as small entities.

Section 920.52(a)(3) of the order authorizes regulations to establish the pack of the container or containers which may be used in the packaging or handling of kiwifruit. Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Among the pack requirements, is a size variation tolerance requirement which specifies that not more than 5 percent, by count, of kiwifruit in any container may fail to meet the pack requirements of § 920.302(a)(4). The size variation tolerance does not apply to other pack requirements such as how the fruit fills the cell compartments, cardboard fillers, or molded trays, or any weight requirements.

The Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, met on February 8, 1995, and recommended by unanimous vote to relax the current size variation tolerance from 5 percent to 10 percent for bag, volume fill, bulk, cell compartments, cardboard fillers, or molded tray containers of Size 45 kiwifruit for pack under the Federal marketing order for kiwifruit grown in California.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the rules and regulations outlines the pack requirements for fresh shipments of California kiwifruit. Section

920.302(a)(4)(i) outlines pack requirements for proper size, and size variation, and contains a table that provides minimum net weights for count designation of kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. Section 920.302(a)(4)(ii) outlines pack requirements for fruit size variation in bags, volume fill and bulk containers and includes a table that specifies numerical size designations that are used to determine kiwifruit sizes. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes.

Packout by fruit size, of Size 45 containers, increased from 1.80 percent for the 1993–94 season to 14.34 percent for the 1994–95 season. This increase in packout, of Size 45 fruit, is a result of blending Size 49 fruit into Size 45 fruit containers and as a result of weather conditions in the central and southern parts of California which produced a larger percentage of smaller and flatter kiwifruit. Generally Size 45 fruit is a rounder fruit. Blending occurs because adjoining size designations have size tolerances that partially overlap and kiwifruit within either size tolerance may be packed in either size designation. In larger sized fruit, handlers see more of a variety of shapes and pack boxes of round fruit and boxes of flat fruit for each size in order to stay within the size variation requirements. For economic and practical reasons, most handlers pack boxes that include both the round Size 45 fruit, as well as smaller flat fruit.

During the past season, a number of handlers experienced increased difficulty in meeting the size variation tolerance in the Size 45 containers. Currently, a variation of 1/4-inch (6.4 mm) difference is allowed between the widest and narrowest pieces of fruit in a Size 45 pack for all containers. There is a tolerance of 5 percent for fruit that exceeds the 1/4-inch variation, meaning that up to 5 percent of the fruit in any one container could exceed the 1/4-inch variation. As the size of the fruit increases, so does the size of the variation allowed. In the larger fruit sizes, failure to meet the required size variation standards results in packs that are visibly irregular in size. In Size 45, however, when the 5 percent tolerance is exceeded, the variation is difficult to detect visually. During the packing operation, a mechanical sizer routinely sorts the fruit by shape and size. The fruit which is missed by the mechanical sizer must be correctly sorted by the handler. Since it is not economically feasible for each handler to be equipped

with a caliper to measure size variation, they rely on their visual judgment. During inspection, calipers are utilized by the inspectors to determine if the size variation is met for Size 45 containers. The 5 percent tolerance requirement is seldom met, but the fruit is found to vary slightly above the allowed tolerance of 5 percent (within 6–8 percent tolerance). Handlers have found that it is cost-prohibitive to slow down their operations in an attempt to stay within the current tolerance levels and to recondition the fruit that fails inspection.

The committee's intention in increasing the size variation tolerance is to set an acceptable size variation tolerance that can be visually discerned while the packing operation is in progress and results in a Size 45 container that is uniform in size.

The industry supports the increase in the size variation tolerance to 10 percent, by count, for the fruit in any Size 45 container. An alternative studied by the committee field staff and considered by the committee was to increase the degree, or size of the variation allowed, from 1/4-inch to 3/8-inch. Throughout the season, fruit was measured and sample boxes were made up depicting this increased variation. It was the consensus of the field staff, inspection service and industry handlers that such an increase would allow for the blending up of undersize fruit. The end result would be a box that visibly showed a variation of fruit size, including undersize fruit. This was deemed not acceptable as the industry desires to pack a uniform box of fruit.

Another alternative examined and effectuated by this rule increases the 5 percent size variation tolerance level to 10 percent. Throughout the season, field staff observed and polled handlers and inspectors on problems encountered with Size 45. The overwhelming majority of the cases where Size 45 fruit was rejected for size variation, the tolerance level was in the 6 percent to 8 percent range. It was not possible to distinguish a box at 10 percent variation from one at 5 percent, without the use of a caliper. The general consensus was that once a 10 percent tolerance was exceeded, the variation became more visibly apparent and the handlers would recognize the need for repacking before calling for inspection.

This rule relaxes the tolerance for Size 45 packs by increasing the number of Size 45 kiwifruit allowed in the container that are not within the 1/4-inch variance. For example, the pieces of fruit, which vary more than 1/4-inch in a 22-pound volume fill container, could increase from 2 pieces to 5 pieces. This

tolerance increase will not permit blending of additional sizes beyond those currently blended, but will grant more flexibility for varying shapes of the fruit. This relaxation is beneficial to both growers and handlers. The 10 percent size variation tolerance decreases the amount of handler repacking and reduces inspection time and cost, thereby making it more cost effective for handlers. This increase will not result in any visual difference in uniformity.

Section 920.302(a)(4) is amended by revising paragraphs (i) through (iv) and adding new paragraphs (v) and (vi). Included in these changes are editorial changes made for clarity. Diameter variances are specified for kiwifruit packed in cell compartments, cardboard fillers or molded trays. These provisions appear in § 51.2338(d) of the United States Standards for Grades of Kiwifruit (7 CFR 51.2338(d)). Also, these changes delete the phrase: "Provided, That for the season ending July 31, 1995, such containers may also hold 23-pounds net weight of kiwifruit" in § 920.320(a)(4)(iv) (59 FR 53565). This phrase is no longer needed as it applied to the 1994-95 season.

The proposed rule concerning this action was published in the April 24, 1995, **Federal Register** (60 FR 20062). That proposed rule provided a 30-day comment period which ended May 24, 1995. No comments were received.

This final rule impacts all handlers in the same manner. The increased size variation tolerance eases some of the burden associated with packing and sizing kiwifruit and enables handlers to pack and sell more kiwifruit. This change reduces costs for handlers and growers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this relaxation of pack requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 920 is amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. In section 920.302, paragraphs (a)(4) (i) through (iv) are revised and new paragraphs (a)(4) (v) and (vi) are added to read as follows:

#### § 920.302 Grade, size, pack, and container regulations.

(a) \* \* \*  
(4) \* \* \*

(i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) Kiwifruit packed in cell compartments, cardboard fillers or molded trays may not vary in diameter more than:

Sizes	Diameter
30 or larger .....	1/2-inch (12.7 mm).
31-38 .....	3/8-inch (9.5 mm).
39 or smaller .....	1/4-inch (6.4 mm).

Kiwifruit packed in bags, volume fill or bulk containers, fruit may not vary more than:

Sizes	Diameter
30 or larger .....	1/2-inch (12.7 mm).
33, 36, 39, and 42 ....	3/8-inch (9.5 mm).
45 or smaller .....	1/4-inch (6.4 mm).

Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Size 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 10 percent) may fail to meet the requirements of this paragraph.

(iii) The fruit packed in containers with cell compartments, cardboard fillers, or molded trays shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.50

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample

unit may be more than 4 ounces less than such weight.

(iv) When kiwifruit is packed in bags, volume fill or bulk containers, the following table specifying the numerical size designation and maximum number of fruit per 8-pound sample is to be used.

Column 1 numerical count size designation	Column 2 maximum number of fruit per 8-pound sample
21 .....	22
25 .....	27
27/28 .....	30
30 .....	32
33 .....	35
36 .....	40
39 .....	45
42 .....	50
45 .....	55

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(v) For shipments in volume fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(vi) All volume fill containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

Dated: June 15, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
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#### 7 CFR Part 948

[Docket No. FV95-948-2IFR]

#### Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1995-96 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to